

Eviction

Last Updated Sunday, 23 April 2006

Eviction occurs when the court enters an order for the tenant to vacate the property. This order is enforceable only by the sheriff. It allows the sheriff to monitor the removal of the tenant and their property from the premises.

Evictions without Court Order

It is never legal for a landlord to evict a tenant without a court order.

When a Tenant Has Not Paid Rent

Before filing a suit to evict a tenant for nonpayment of rent, the landlord must post a written, signed demand giving the tenant the choice of either paying the past due rent or moving out within three days. In computing the period of days the first day is excluded. Therefore, the three day time period begins the day following the posting. The notice must be posted in a conspicuous place on the premises. After the notice has been posted and if the tenant has not paid the rent or moved out within three days, the landlord need not accept the rent and may file an eviction suit at the Justice Center, 6th and Canyon. The time begins running whether or not the tenant discovers it posted. Also the time continues to run regardless if it is a Saturday, a Sunday, or a holiday. The tenant's legal right to this three day notice prior to eviction for nonpayment of rent cannot be taken away by the language in a lease.

When a Tenant has Broken a Condition of the Lease

Before filing a suit to evict a tenant for noncompliance with lease conditions, the landlord must post a written, signed demand in a conspicuous place for delivery of possession of the premises. The notice must state the reason the landlord believes the tenant is in violation of the lease and give the tenant three days to either move out voluntarily or correct the violation. (Noise violations are particularly difficult issues for both landlords and tenants regarding eviction.) After the written notice has been posted and if the tenant has not moved out by the end of the three days and has not corrected the violation, the landlord may file an eviction suit at the Justice Center, 6th and Canyon. In computing the three day notice the first day is excluded. Therefore, the three day period begins the day following the posting. The start of the three day time limit begins running whether or not the tenant discovers it posted. Also the time continues to run regardless of whether it is a Saturday, a Sunday or a holiday.

Roommate Problems

Where a problem arises in a roommate situation, eviction of one or more roommates can be done by the landlord. The landlord can serve the tenant by posting a three day notice (summons and complaint) on the premises or by leaving a copy with a resident in the household over the age of 18. In addition, the landlord must send the summons and complaint in the mail the following day. If service is by posting, a copy must be mailed the next day. Where confusion exists regarding legal rights and responsibilities by any of the roommates, legal advice should be sought.

In all circumstances, written roommate agreements are recommended to clarify roommate responsibilities and expectations. Sample roommate agreements are available at the Community Mediation Service, 2160 Spruce Street, Boulder, 80302, (303) 441-4364.

For assistance in resolving roommate conflicts call the Community Mediation Service.

Tenant's Continuing Liability for Rent

If a tenant leaves the premises before the end of the lease term in compliance with a landlord's demand to vacate, the tenant may still be responsible to pay rent.

Eviction Procedure-Unlawful Detainer

A. Three Day Notice

If the proper three day written notice has been given to the tenant, the tenant should immediately call the landlord, the Community Mediation Service, and/or legal counsel to attempt to resolve the issues, or comply with the lease (if the eviction is for breaking a clause of the lease, e.g., non-payment of rent, noise, pets, guests.) If the situation has not been

remedied within the three-day time period, the landlord may initiate an eviction suit under a specific procedure set forth by laws of the State of Colorado in a statute entitled "Forcible Entry and Detainer." (Section 13-40-101 et seq., C.R.S.) The landlord may not lock the tenant out of the premises, shut off the utilities or forcibly move the tenant or his/her possessions out of the building. Once the landlord has obtained a court order for eviction the sheriff may be called in by the court to perform such functions.

By state law, the prevailing party in a "Forcible Entry and Detainer" suit is entitled to an award of reasonable attorney's fees and costs of suit.

B. In Event of a Lockout

Any form of self-help by a landlord, including locking a tenant out of the premises, is not permissible. Actions such as physical contact or intimidation should be reported to the police. If a tenant is locked out, the tenant may not force their way back into the premises. A tenant should seek legal advice prior to attempting to re-enter the premises on their own.

Uninhabitable Premises-Constructive Eviction

Unless otherwise expressly agreed, there is an implied agreement in every lease for real property that the landlord will refrain from acts or omissions which interfere with the tenant's right of peaceable enjoyment of the premises. If this implied agreement is breached by the landlord, either by act or by omission, resulting in the premises becoming legally uninhabitable, the tenant may vacate the premises, terminate the lease, and owe no further rent. To exercise this remedy, the tenant must abandon the premises. Before the tenant is justified in moving out, the landlord must also have been given notice of the problem by the tenant and a reasonable time in which to remedy the situation. A tenant should get legal advice from an attorney prior to exercising this remedy. Only in extreme conditions may a tenant vacate the premises and stop paying rent. This remedy should never be attempted without first talking to an attorney.